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May 18, 2020

VIA ECF

Hon. Douglas E. Arpert
United States Magistrate Judge
Clarkson S. Fisher Building & U.S. Courthouse
Room 6000
402 East State Street
Trenton, NJ 08608

Re: **Lawson, et al. v. Praxair, Inc., et al.**
Civil Action No. 3:16-cv-02435-BRM-DEA

Dear Judge Arpert:

As you know, we represent the Praxair Defendants in the above-referenced matter. Please accept this letter as a response to Plaintiffs' letter filed today (doc. no. 311) and as Praxair's request that its 30(b)(6) ESI deposition be postponed for an additional 30 days or until June 30, 2020. Currently, Praxair's 30(b)(6) witness is to be deposed by May 30, 2020. *See* Doc. No. 307.

As Your Honor may recall, the parties participated in a status conference call with Your Honor on April 8, 2020. During that call, the parties discussed the circumstances and impediments surrounding the COVID-19 pandemic and how it affected the parties' ability to move forward with depositions. Your Honor determined that depositions would be put on hold and that the parties would revisit the issue during our next status conference call, which is scheduled for June 17th. Contrary to Plaintiffs' counsel's assertion, at no time did Your Honor direct the parties to make a submission to the Court identifying any impediments that remained with moving forward with depositions.¹

¹ It should also be noted that the language relied upon by Plaintiffs in the April 22nd letter to the Court was written by Plaintiffs and that Praxair's interpretation of Plaintiffs' language "[a]t that time" referred to the next status conference call with Your Honor on June 17th.

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Plaintiffs' letter of today is simply a symptom of counsel's dissatisfaction with Your Honor's decision on April 8th to pause depositions until our next status conference call and is solely an attempt to circumvent that decision and resume depositions sooner. The issues Praxair raised on the April 8th call with respect to completing depositions during this pandemic still remain. The stay-at-home Orders for the applicable jurisdictions are still in effect. Also, we are still unable to access our office to obtain pertinent materials, which is particularly difficult for a 30(b)(6) designee since the witness' testimony is not limited to their own knowledge. Praxair also has concerns regarding the possible detriments of proceeding with a 30(b)(6) deposition remotely. We are working remotely as best as possible.

Despite the circumstances, the parties are continuing with written discovery during this time. Indeed, Praxair has responded to Plaintiffs' Eighth Set of Interrogatories on May 7th and is in receipt of Plaintiffs' Ninth Set of Discovery Requests and a Second 30(b)(6) Deposition Notice on May 15th. Also, Plaintiffs have already deposed nine of the ten witnesses permitted under Rule 30 and yet are still continuing to identify new witnesses since the parties' joint submission to the Court on April 22nd. Therefore, it is questionable whether the depositions identified in Plaintiffs' letter of today are even permitted under the Rules. Praxair is also awaiting the depositions of the hospital's witnesses, but we presume the hospital is in the same position as Praxair in terms of dealing with COVID-19 exigencies, and thus would not be in a position to make its witnesses available yet either.

Accordingly, Praxair requests an additional 30 days to complete the 30(b)(6) ESI deposition, during which time the parties can revisit the issue of proceeding with depositions in this case with Your Honor on the previously scheduled June 17th status conference call. Praxair does not believe that a call with Your Honor is necessary before that time.

Please let us know if you have any questions or need any additional information. Thank you for your consideration in this regard.

Respectfully,

s/Georgette Castner

Georgette Castner

cc: All Counsel of Record (*via ECF*)